Hanson Aggregates BMC, Inc. *and* International Union of Operating Engineers, Local 542, AFL–CIO. Cases 4–CA–33330, 4–CA–33508, 4–CA–33547, 4–CA–34290, 4–CA–34362, 4–CA–34363, and 4–CA–34378

September 30, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On October 23, 2006, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The General Counsel and the Respondent each filed exceptions and a supporting brief. The Charging Party filed exceptions with supporting argument. The Respondent filed an answering brief to the General Counsel's and the Charging Party's exceptions. The General Counsel filed an answering brief to the Respondent's exceptions and a reply brief to the Respondent's answering brief.

The National Labor Relations Board[1] has considered the decision and record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[2] and conclusions,[3] except as modified below, and to adopt the recommended Order as modified and set forth in full below.

As fully described in the judge's decision, the Respondent and the Union met in 26 bargaining sessions from October 2004 to January 2006 in an unsuccessful attempt to conclude an initial collective-bargaining agreement.[4] The complaint alleges that during this period the Respondent violated Section 8(a)(5) of the Act by failing to respond to several information requests from the Union. For the reasons set forth below, we reverse the judge's findings with respect to three of those information requests.[5]

A. The Request for Blue Cross Information

By letter dated July 1, 2005,[6] the Union requested 12 items of information regarding the Respondent's proposal to continue its current health care plan, administered by HighMark Blue Cross. The letter stated that the information was necessary for the Union to investigate the proposed plan and its administration, and to determine whether the Union would agree to the plan. Request item 7 sought "copies of all claims, working documents and any documents showing the final disposition of those claims for the health care plan during the last year." Item 12 sought a list of "all procedures which you

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products,* 91 NLRB 1083 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] Contrary to the judge, we find that the General Counsel met his initial burden under *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), of proving that union activity was a motivating factor in the Respondent's decision to discharge employee Glen Peabody. However, we agree with the judge's alternative finding that the Respondent met its rebuttal burden of proving that it would have discharged Peabody on September 3, 2004, even in the absence of his union activity. On that date, the Respondent reasonably believed that Peabody created a serious safety hazard by falling asleep in his truck with the engine running and the wheels unblocked. The Respondent's work rules provide for immediate termination for employees caught sleeping on duty, and at least one employee had previously been discharged for that offense alone. After being confronted about his conduct, Peabody exacerbated the situation by speeding through the Respondent's quarry in his truck. In sum, the Respondent has shown that it would have discharged Peabody in any event for his misconduct on September 3.

There are no exceptions to the judge's findings that the Respondent committed numerous violations of Sec. 8(a)(1) in July and August 2004, that the Respondent did not violate Sec. 8(a)(1) when Supervisor Shawn Gorg noncoercively questioned an employee concerning the Union's prospects, and that the Respondent did not violate Sec. 8(a)(3) by issuing attendance and tardiness warnings to 17 employees. We need not pass on the General Counsel's exceptions to the judge's failure to find additional 8(a)(1) violations based on statements by Supervisor Doug Chilson to Peabody. Any such findings would be cumulative to violations found and would not materially affect the remedy or our analysis of Peabody's discharge.

[4] We affirm the judge's findings that the Respondent did not violate Sec. 8(a)(5) by refusing to meet more frequently from October 19, 2004, to February 24, 2005, but that the Respondent did violate Sec. 8(a)(5) by refusing to bargain about implementation of a premium holiday for dental insurance coverage. The judge further found that the Respondent violated Sec. 8(a)(5) by implementing seven bargaining proposals in the absence of a good-faith impasse in overall negotiations. He found that there were numerous bargaining issues, as well as information requests, outstanding when the Respondent declared impasse. In affirming the judge we find it unnecessary to rely on his finding that the outstanding information requests precluded the possibility of impasse.

We affirm the judge's finding that the Respondent did not refuse to bargain about its safety incentive program and, in the absence of exceptions, we affirm his finding that the Respondent did violate Sec. 8(a)(5) by its untimely and incorrect response to the Union's request for information about safety awards.

[5] With regard to the Union's request for information about the Respondent's dental premium holiday, we affirm the judge's finding that the Respondent unlawfully failed to provide information requested in items 6 and 7 of the Union's request. Both the General Counsel and the Respondent agree that the information requested in item 8 has already been provided; therefore, we dismiss the allegation as to that item.

[6] Unless otherwise stated, all subsequent dates are in 2005.

have determined not to be covered because they are experimental during the last 10 years."

With regard to item 7, the Respondent stated, "claims and disposition of claims are handled by HighMark Blue Cross. Furthermore, under federal law, that information may not be disclosed to the Company or to other parties." With regard to item 12, the Respondent stated, "claims are handled by HighMark Blue Cross and the specifics of those claims may not be released by federal law." The Respondent reiterated this position at the parties' July 12 bargaining session, and provided no information or documentation responsive to item 7 or 12.

The Union sent a second request on July 14, repeating that the information was necessary for the Union to evaluate the proposed plan. The request asked the Respondent to provide the information in items 7 and 12 stripped of any information that might identify individual employees.

The Respondent replied by letter of July 20, stating that it did not handle claims and had no knowledge of how claims were paid. The letter also stated that the Respondent would look into whether a summary of claims could be obtained from HighMark Blue Cross. However, the Respondent did not subsequently provide any information responsive to the requests.

The judge dismissed the allegation that the Respondent's handling of information request items 7 and 12 violated Section 8(a)(5). He stated that the Respondent had provided the Union with a list of exclusions in October 2004, and that the claims information was provided in the Respondent's letter of July 20. We disagree.

First, contrary to the judge, we find that the specific information requested in items 7 and 12 of the Union's letter was *not* provided in either the October 2004 submission or the Respondent's July 20 letter. In particular, a general list of exclusions such as the one provided in October 2004 does not suffice as a response to the request for more detailed information about health care claims experience and experimental procedures.

We also find that the Union established the relevance of the requested information as to the claims experience of nonunit employees under a health plan shared by the unit employees.[7] The Union stated in both its initial request and its followup letter that the requested information was necessary to allow the Union to evaluate the Respondent's proposed health care plan. It is reasonable to assume that some nonunit employees have submitted claims based on medical conditions that no unit employee has experienced. Information about the disposition of those claims would provide guidance as to how HighMark Blue Cross would handle similar claims for unit employees. We therefore find that the Union has met its burden of proving the requested nonunit information was relevant and necessary to gaining a complete understanding of the overall Blue Cross plan's administration in order to bargain intelligently about it.

We reject the Respondent's contention that it was not required to provide the requested information because it was confidential. The party asserting a claim of confidentiality has the burden of proof. *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991), citing *Washington Gas Light Co.*, 273 NLRB 116, 116 (1984). The Union's followup letter requested the information with employees' names redacted and, consistent with the Health Insurance Portability and Accountability Act (HIPAA), limiting the disclosure of protected individually identifiable health information. We find that the Respondent has failed to show that it had a legitimate and substantial confidentiality interest in the information requested, as clarified. Cf. *Goodyear Atomic Corp.*, 266 NLRB 890, 891–892 (1983) (Federal Privacy Act does not support employer's confidentiality defense to requested disclosure of unit personnel medical information in a form that is not individually identifiable), enfd. 738 F.2d 155 (6th Cir. 1984).

Finally, although the information sought by the Union was not in the Respondent's possession, the Respondent had a duty "to make a reasonable effort to secure the requested information and, if unavailable, explain or document the reasons for the asserted unavailability." *Rochester Acoustical Corp.,* 298 NLRB 558, 563 (1990), enfd. mem. 932 F.2d 955 (2d Cir. 1991), quoting *Goodyear Atomic Corp.*, supra, 266 NLRB at 896. See also *Garcia Trucking Service,* 342 NLRB 764, 764 fn. 1 (2004). The Respondent's July 20 letter to the Union stated that the Respondent would look into obtaining a summary of claims from HighMark Blue Cross, but there is no evidence that the Respondent did so.

For the above-stated reasons, we reverse the judge and find that the Respondent violated Section 8(a)(5) by refusing to provide the requested information.

B. Request for Aetna Documents

The Respondent notified the Union on October 25, 2005, that, effective January 1, 2006, Aetna would replace Blue Cross as the Respondent's health care plan administrator. By letter dated December 1, 2005, the Union requested copies of all administrative manuals, rules, or regulations with respect to the proposed Aetna health plan. At the parties' December 1 bargaining session, the Respondent informed the Union that Aetna did

[7] Information about the claims experience of *unit* employees is presumptively relevant. *North American Soccer League*, 245 NLRB 1301, 1306 (1979); *Nestle Co.*, 238 NLRB 92, 94 (1978).

not publish a separate administrative manual, rules, or regulations. By letter of December 5, the Respondent further replied to the information request, stating that the only change to the existing plan was that of the administrator and the providers, and that documents previously provided to the Union were applicable to the new plan. Relying on this statement, the judge found no violation. We reverse.

Information concerning the administrator of the unit employees' health plan is as presumptively relevant as the description of the plan itself. *Honda of Hayward*, 314 NLRB 443 (1994). Consequently, the Respondent bears the burden of showing that the requested relevant bargaining information does not exist. *Harmon Auto Glass*, 352 NLRB 152, 153 (2008). A bare assertion, unsupported by testimony or documentary evidence, is insufficient. Assuming that the Respondent did not possess any Aetna administrative manuals, rules, or regulations as a result of business discussions leading to the selection of Aetna to replace Blue Cross, the Respondent had a duty to seek the requested information from Aetna and, if the information did not exist, to provide documentation to that effect. *Rochester Acoustical Corp.,* supra, 298 NLRB at 563.

Accordingly, we find that the Respondent violated Section 8(a)(5) by failing to meet its obligation with respect to this information request.[8]

C. Request for Information About Dual Health Care Coverage

Under both the current Blue Cross plan and the Respondent's proposed Aetna plan, only single and family coverage were available, requiring employees who desired health plan benefits for themselves and only one dependent to select family coverage. At the parties' November 9 bargaining session, the Union suggested that health care costs could be reduced if the Respondent adopted a plan with an additional option for dual (i.e., two-person) coverage. The Union orally requested that the Respondent either check employees' health care enrollment records or poll employees to provide information about how many employees would be interested in or qualify for dual health care coverage.[9] The Respondent expressed doubt as to whether it had or could get the requested information.

In its December 1 information request letter, the Union asked for "a breakdown of the Unit's demographics pertaining to elected insurance coverage if the category of 'Dual' coverage was available." During bargaining on that date, Union Representative Frank Bankard volunteered to poll the employees on this issue. By letter dated December 5, the Respondent stated, "[T]he Company does not have information on who would, if available, choose two person coverage. We have suggested that you canvas the employees."

Bankard testified that, at some unspecified time, the Respondent's chief negotiator, Jeffrey Carey, denied him permission to poll employees about dual coverage at the Respondent's facility. However, the Union's typed bargaining notes for December 1 and a letter from Bankard to Carey on December 7 state only that the Respondent failed to respond to this offer. Bankard testified that he had previously conducted off-site meetings where he polled employee sentiment about other bargaining proposals. Inasmuch as such meetings were voluntary, and those who did not support the Union were unlikely to attend, he preferred to poll employees about dual coverage at the jobsite, where they had to be present for work. Bankard admitted that he made no attempt to canvas employees after receiving the Respondent's December 5 letter suggesting he do so.

The judge found that the requested information was necessary and relevant for the Union to formulate bargaining proposals with specific cost savings. He also found that it was not unreasonable for the Union to request permission to poll employees at the Respondent's facility, to ask the Respondent itself to speak with 13 employees who had family plan coverage, or to review the employees' personnel files. The judge therefore concluded that the Respondent's failure to provide the requested information violated Section 8(a)(5). We reverse.

The Union requested a "breakdown of the Unit's demographics." When the parties discussed the issue, union negotiator Bankard volunteered to settle the question by polling the employees. He did not, however, follow through.[10]

[8] For the reasons set forth in the judge's decision, we affirm his finding that the Respondent violated Sec. 8(a)(5) by failing to provide requested information about medical providers participating in Blue Cross- and Aetna-administered plans.

To remedy the 8(a)(5) violations found in this section and the preceding section, we shall order the Respondent to make a reasonable effort to secure the information from HighMark Blue Cross and Aetna, and, if any information remains unavailable, to explain and document the reasons for its continued unavailability.

[9] At some point, the Union suggested that the Respondent needed to interview or examine the enrollment records for only the 13 unit employees with current family plan coverage.

[10] Contrary to the judge, the record does not support a finding that the Respondent refused to let the Union conduct a poll at the jobsite. Accordingly, there is no need to decide whether the Respondent would

To the extent the judge reasoned that it was unlawful for the Respondent to refuse to conduct such a poll itself, we disagree. The Respondent's statutory bargaining obligation does not include the duty to poll unit employees about their receptivity to a hypothetical proposal from their union representative.[11]

Based on the foregoing, we find that the Respondent did not violate the Act by refusing to provide the dual health care coverage information requested by the Union.

AMENDED REMEDY

The judge's recommended remedy provides that employees adversely affected by the Respondent's unlawful unilateral changes be made whole in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950). However, to the extent that those changes did not result in employees being separated from employment, any make-whole remedy shall be in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971). See, e.g., *Raven Government Services*, 336 NLRB 991, 992 (2001), enfd. 315 F.3d 499 (5th Cir. 2002).

We shall also order the Respondent to offer any employees who may have been discharged pursuant to the unlawful unilateral changes in the Respondent's attendance policy full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. However, the Respondent is entitled to show, at compliance, that it would have discharged those employees under a preexisting attendance policy, avoiding as to those employees any backpay and reinstatement obligation.[12]

The Respondent shall also be ordered to rescind and remove from employees' files all discipline issued to them as a result of the unlawful unilateral changes in its attendance policy. Although the Respondent is required to remove any record of its discharge or discipline of an employee under a changed new policy, should the Respondent establish at compliance that it would have discharged or disciplined the employee under a preexisting policy, it may maintain a record of the employee's failure to comply with such policy. See *Uniserv*, supra.[13]

ORDER

The National Labor Relations Board orders that the Respondent, Hanson Aggregates BMC, Inc., Penns Park, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the International Union of Operating Engineers, Local 542, AFL–CIO (the Union) as the exclusive collective-bargaining representative of employees in the unit described below, by unilaterally changing the terms and conditions of employment of those employees without having first bargained with the Union in good faith to impasse.

(b) Failing and refusing to bargain collectively with the Union by failing and refusing to furnish relevant information requested by the Union and by failing to furnish relevant requested information in a timely manner.

(c) Interrogating employees concerning their union sympathies, soliciting employees' complaints and grievances and promising employees improved terms and conditions of employment, threatening employees with unspecified reprisals, and telling employees it would be futile to select the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify and give the Union an opportunity to bargain before making any change in the terms and conditions of employment of employees in the following appropriate unit:

> All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Welders and maintenance employees employed by the Employer at its 852 Swamp Road, Penns Park, Pennsylvania facility; but excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

(b) On request, rescind the changes to terms and conditions of employment unilaterally implemented on October 24, 2005, and January 1, 2006.

(c) Offer to any employees discharged under the unilaterally implemented attendance policy who would not have been discharged under the preexisting attendance

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have any statutory obligation to permit Union access to its premises for this purpose.

[11] See *Warner Press,* 301 NLRB 1161 (1991) (Board expressly endorses judge's statement that the employer is under no obligation "to do [the Union's] research . . . merely to help the Union decide whether to seek those benefits.").

[12] *Uniserv*, 351 NLRB 1361, 1361 fn. 1 (2007); *Allied Aviation Fueling of Dallas, LP*, 347 NLRB 248 fn. 3 (2006), enfd. 490 F.3d 374 (5th Cir. 2007).

[13] Because, as stated above, the Respondent will have the opportunity at compliance to show that it would have discharged or disciplined employees even absent the unilateral change in attendance policy, the Order and notice shall not include the requirement that the expunction or reinstatement offers be completed "within 14 days of the date of the Board's Order." *Allied Aviation Fuel*, supra, 347 NLRB 248 fn. 3.

policy full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make employees whole for any loss of earnings and other benefits suffered as a result of its unilateral changes, in the manner set forth in the remedy section of the judge's decision, as amended in this Decision.

(e) Rescind and remove from employees' files any discipline issued to them as a result of the unilaterally-implemented attendance policy, and within 3 days thereafter notify the affected employees that this has been done and that the discipline will not be used against them in any way.

(f) In a timely manner, furnish the Union with the necessary and relevant information it requested, including a list of medical providers for its proposed Aetna health plan and the information requested regarding the dental premium holiday requested in items 6 and 7 of the Union's December 1, 2005 letter.

(g) Request from HighMark Blue Cross claims exclusions and experimental procedures information sought by the Union in its July 1, 2005 letter, as clarified in its July 14 letter, and provide that information to the Union. If that information is unavailable, explain or document the reasons for this unavailability.

(h) Request from Aetna copies of all administrative manuals, rules, or regulations requested by the Union on December 1, 2005. If that information is unavailable, explain or document the reasons for this unavailability.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, post at its facility in Penns Park, Pennsylvania, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 21, 2004.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with the International Union of Operating Engineers, Local 542, AFL–CIO (the Union) as the exclusive collective-bargaining representative of our employees in the unit described below, by unilaterally changing the terms and conditions of employment of those employees without having first bargained with the Union in good faith to impasse.

WE WILL NOT fail and refuse to bargain collectively with the Union by failing and refusing to furnish relevant information requested by the Union and by failing to furnish relevant requested information in a timely manner.

WE WILL NOT interrogate employees concerning their union sympathies, solicit employees' complaints and grievances and promise employees improved terms and

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conditions of employment, threaten employees with unspecified reprisals, or tell employees it would be futile to select the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL notify and give the Union an opportunity to bargain before making any change in the terms and conditions of employment of employees in the following appropriate unit:

> All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Welders and maintenance employees employed by us at our 852 Swamp Road, Penns Park, Pennsylvania facility; but excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

WE WILL, on request, rescind the changes to terms and conditions of employment unilaterally implemented on October 24, 2005, and January 1, 2006.

WE WILL offer to any employees discharged under the unilaterally implemented attendance policy who would not have been discharged under the preexisting attendance policy full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make employees whole for any loss of earnings and other benefits suffered as a result of our unilateral changes, with interest.

WE WILL rescind and remove from employees' files any discipline issued to them as a result of the unilaterally-implemented attendance policy and, WE WILL, within 3 days thereafter, notify the affected employees that this has been done and that the discipline will not be used against them in any way.

WE WILL, in a timely manner, furnish the Union with the necessary and relevant information it requested, including a list of medical providers for our proposed Aetna health plan and the information regarding the dental premium holiday requested in items 6 and 7 of the Union's December 1, 2005 letter.

WE WILL request from HighMark Blue Cross claims exclusions and experimental procedures information sought by the Union in its July 1, 2005 letter, as clarified in its July 14 letter, and provide that information to the Union. If that information is unavailable, WE WILL explain or document the reasons for this unavailability.

WE WILL request from Aetna copies of all administrative manuals, rules, or regulations requested by the Union on December 1, 2005. If that information is unavailable, WE WILL explain or document the reasons for this unavailability.

HANSON AGGREGATES BMC, INC.

Margaret M. McGovern, Esq. and *Elana R. Hollo, Esq.,* for the General Counsel.

Karl A. Fritton, Esq. and *Jonathan R. Nadler, Esq.,* of Philadelphia, Pennsylvania, for the Respondent-Employer.

Louis Agre, Esq., of Fort Washington, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on May 18 and 19 and July 17 through 20, 2006, in Philadelphia, Pennsylvania, pursuant to a consolidated complaint and notice of hearing in the subject cases (the complaint) issued on April 3, 2006, by the Regional Director for Region 4 of the National Labor Relations Board (the Board). The underlying charges were filed on various dates in 2004, 2005,[1] and 2006 by International Union of Operating Engineers, Local 542, AFL–CIO (the Charging Party or the Union) alleging that Hanson Aggregates BMC, Inc. (the Respondent or the Employer) has engaged in certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent engaged in a number of independent violations of Section 8(a)(1) of the Act including coercive interrogation, threats of unspecified reprisals, and the solicitation of grievances and complaints while promising improved terms and conditions of employment in order to discourage employees from supporting the Union. The complaint further alleges the Respondent terminated an employee and issued written attendance and tardiness warnings to employees in violation of Section 8(a)(1) and (3) of the Act. Additionally, the complaint alleges that the Respondent refused to provide necessary and relevant information to the Union and unilaterally implemented a number of mandatory subjects of bargaining in violation of Section 8(a)(1) and (5) of the Act without notice or affording the Union an opportunity to bargain absent an overall impasse in good-faith bargaining.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel[2] and the Respondent, I make the following

[1] All dates are in 2005, unless otherwise indicated.

[2] The General Counsel's motion to correct the transcript attached to its brief, is granted. I note, however, that the change from Ms. McGovern at p. 365, L. 10, should be to Mr. Nadler.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in extracting and processing crushed stone and manufacturing bituminous asphalt at its quarry in Penns Park, Pennsylvania, where it annually sold and shipped goods and materials valued in excess of $50,000 directly to customers located outside the Commonwealth of Pennsylvania. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent is a United Kingdom based operator of quarries throughout the world. It employs approximately 9000 workers, many of whom are represented by labor organizations.

Respondent took over operations of the quarry in Penns Park, Pennsylvania, from a predecessor employer in the summer of 2003. Around that time, the Union commenced an organizing campaign and filed a representation petition. An election was held in July 2003 which the Union lost. The following year the Union again attempted to organize the Respondent's employees. After a petition was filed, an election was held on August 31, 2004. The Union won the election and was certified by the Board on September 9, 2004 (GC Exh. 3).

At all material times, Tom Spellman was Respondent's operation manager for South Eastern Pennsylvania and New Jersey, Shawn Gorg served as the plant manager, and Doug Chilson held the position of assistant plant manager. Manager of Labor Relations Jeffrey Carey served as the Respondent's chief negotiator during the parties' collective-bargaining negotiations.

Union Organizer Frank Bankard attended each of the 26 collective-bargaining sessions held between the parties and served as the primary note taker while employee Glen Peabody was one of the Union's leading adherents who worked on the night shift at the Respondent's quarry. International Representative Joseph Giacin served as the Union's chief negotiator from February 2005 to January 2006.

The parties commenced collective-bargaining negotiations for an initial contract in the fall of 2004 but have been unable to reach an agreement to date. The Respondent proffered its last and best contract offer to the Union on or about September 2 that was rejected by the union membership on September 28.

B. The 8(a)(1) Allegations

1. Allegations concerning Doug Chilson

The General Counsel alleges in paragraphs 6(a)–(e) of the complaint that Chilson in July and August 2004, interrogated employees concerning their union sympathies, solicited employee's complaints and grievances in order to discourage employees from supporting the Union, and threatened employees with unspecified reprisals if they continued to support the Union.

The Board has held that interrogation is not a per se violation of Section 8(a)(1) of the Act. *Rossmore House,* 269 NLRB 1176, (1984), affd. sub nom. *HERE Local 11 v. NLRB,* 760 F.2d 1006 (9th Cir. 1985). In determining whether an interrogation is unlawful, the Board examines whether, under all the circumstances the questioning reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Rossmore House,* 269 NLRB at 1177–1178. *Emery Worldwide,* 309 NLRB 185, 186 (1992). Under the totality of circumstances approach, the Board examines factors such as whether the interrogated employee is an open and active union supporter, the background of the interrogation, the nature of the information sought, the identity of the questioner, and the place and method of interrogation. *Rossmore House,* 269 NLRB at 1178 fn. 20; *Bourne v. NLRB,* 332 F.2d 47, 48 (2d Cir. 1964); *Sunnyvale Medical Clinic,* 277 NLRB 1217, 1218 (1985).

a. Conversation in mid-July 2004 at the quarry

Employee Darlene Foerster testified that she was aware of the Union's organizing campaign in the summer of 2004. Sometime in mid-July 2004, while she was working in the batch plant control room, Chilson asked her, "What do you think about unions." Foerster replied, "I have not had any bad experiences." Foerster further testified that Chilson asked her if we treat you ok here and stated that we have done good things for you by whenever you were out sick you could use a vacation day. According to Foerster, Chilson said a number of negative things about the Union and ended the conversation by stating, "It may be for your best interests not to vote for a Union."

Employee Frederick Goodman testified that in mid-July 2004, while in Chilson's truck, he was asked by Chilson, "What do you think about this Union thing and do you need a mouth piece or need somebody to talk for you." Goodman replied, "I can speak for myself."

While Chilson testified during the course of the hearing, the Respondent did not ask him any questions about his conversations with Foerster or Goodman.

Foerster impressed me as a credible witness whose testimony has a ring of truth to it. Her straight forward recitation of what Chilson stated in there conversation convinces me that Chilson made the statements alleged in the complaint. Likewise, I note a pattern with Chilson asking and making the same statements to a number of different employees.

For all of these reasons, and particularly noting that the Respondent did not rebut the testimony of the General Counsel's witnesses regarding this allegation, I find that Chilson's statements violated Section 8(a)(1) of the Act as alleged in paragraph 6(a) of the complaint. *Goya Foods of Florida,* 347 NLRB 1118 (2006).

b. Conversation on July 21 in Chilson's office

Peabody testified that while he was in the office when Chilson was going over some records of absenteeism, Chilson asked him, "What do you think about this Union drive," and "What could the Union do for you that the Company can't do for you." Chilson further stated during the conversation that "I

hope that you will change your mind and vote for the company and give the company a chance."

The conversation and the questions asked are not unlike the same exchange that Chilson had with Foerster and Goodman. The conversation with Peabody took place prior to the representation election and is consistent in all respects with the method that Chilson followed when engaging employees in conversations about the union campaign.

Under these circumstances, and noting that Chilson did not rebut Peabody's testimony supporting this allegation, I conclude that the statements made by Chilson are threatening and coercive. Therefore, I find that they violate Section 8(a)(1) of the Act.

c. Conversations on July 21 and mid-August 2004 in Chilson's truck

James Hall currently works for the Union as an organizer and was terminated by the Respondent on September 3, 2004. During his tenure of employment, he testified that he had several conversations with Chilson when the Union was discussed. In the first conversation that occurred on or about July 21, 2004, while he was working in the asphalt plant, Hall got into Chilson's truck. According to Hall, Chilson asked him, "Whether he was going to vote 'yes or no' for the Union." Hall replied that he had been in the Union for 21–22 years and never had a problem with it.

In the second conversation that occurred in mid-August 2004, Hall was talking to employee Sharon Orrick near the scale house, and was trying to convince her to vote for the Union. According to Hall, Chilson came around the corner and said in the presence of both employees, "You guys are going to vote no, aren't you." Hall replied, "[N]o, I am going to vote yes."

Chilson did not rebut the statements attributed to him by Hall. The Respondent challenges Hall's credibility and argues that he is biased because of his termination and affiliation with the Union. I am convinced that Chilson made the statements in his conversations with Hall. Once again, these statements are consistent with the testimony of three other employees who also had conversations with Chilson about the Union.

Under these circumstances, I conclude that the statements are coercive and therefore, find that the Respondent violated Section 8(a)(1) of the Act as alleged in paragraphs 6(c) and (e) of the complaint.

d. Conversation in mid-August 2004 in Chilson's truck

Peabody testified that in or around mid-August 2004 while working at the quarry he had an occasion to get into Chilson's truck. The topic of the union election came up and Chilson made a number of statements about the Union. He first asked Peabody, "How he was leaning towards the vote." Peabody replied that he was always for the Union. Chilson said, "I was hoping that you would change your mind that the Union can't do anything for you. I hope you think real hard and hopefully you change your mind about voting for the Union and give the company a second chance." Peabody replied that we gave the Company a chance in 2003 and they didn't do anything so that is why we are going to have another vote.

Chilson did not rebut the statements that Peabody attributed to him.

I am convinced that Peabody's recitation of the conversation is accurate. Chilson consistently interrogated a number of employees about there sympathies for the Union and how they intended to cast their vote.

For all of these reasons, I find that Chilson made the statements alleged in paragraph 6(d) of the compliant. Therefore, they are violative of Section 8(a)(1) of the Act.

2. Allegations concerning Shawn Gorg

The General Counsel alleges in paragraph 7 of the complaint that Gorg interrogated an employee concerning the employee's union sympathies.

a. Facts

Employee George Benneman testified that sometime in July 2004, but definitely before the August 31, 2004 representation election, he had a conversation with Gorg near the shop. Benneman admitted that he initiated the conversation with Gorg by stating to him, "that he did not believe these people really knew what a union is all about." Gorg replied, "What do you think." Benneman replied, "I think the Union will be voted in."

b. Analysis

Although Gorg did not testify at the hearing, I am not convinced that the above recitation violates the Act. In this regard, Benneman initiated the conversation and Gorg's reply in no way can be considered coercive or threatening that rises to the level of interrogation under the Act.

Therefore, I recommend that paragraph 7 of the complaint be dismissed.[3]

3. Allegations concerning Tom Spellman

The General Counsel alleges in paragraph 8 of the complaint that Spellman interrogated an employee concerning the employee's union sympathies.

Foerster testified that while working at the quarry in August 2004, she had a conversation with Spellman in her truck. Spellman asked Foerster, "What she thought about Unions." Foerster replied that she never had a problem with one before. Spellman asked Foerster to give the Company another chance to prove itself and asked her to think about it.

Although Spellman testified during the course of the hearing he did not rebut the statements attributed to him by Foerster.

I am convinced that Spellman made the statement alleged in paragraph 8 of the complaint. First, as I found above, Foerster is a credible witness who testified under subpoena and articulated her recitation of the conversation in a clear, concise, and forthright manner. Second, the timing of the conversation was proximate to the scheduled representation election on August 31, 2004. Lastly, the question raised by Spellman was consistent with the conversations that Chilson had with Foerster earlier in July 2004. I note that Chilson admitted that in either June or July 2004, he informed Plant Manager Gorg of the

[3] The General Counsel, in its posthearing brief, concedes this issue.

Union's distribution of organizing cards at the quarry. If both Chilson and Gorg knew about the Union distributing authorization cards, I infer that Spellman, as there superior, was also aware of the organizing campaign. I base this on Chilson's testimony that Gorg told him he would pass the information on and Chilson's testimony that on September 2 and 3, 2004, he telephoned Spellman on three occasions to inform him of incidents that occurred at the quarry during the night shift.

For all of these reasons, I find that Spellman interrogated Foerster about her union sympathy which is violative of Section 8(a)(1) of the Act.

C. The 8(a)(1) and (3) Allegations

1. Allegations concerning written attendance and tardiness warnings

The General Counsel alleges in paragraph 9 of the complaint that Respondent issued written attendance and tardiness warnings to 17 employees because they were seeking union representation and selected the Union as their collective-bargaining representative.

In *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399–403 (1983). In *Manno Electric,* 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in the protected activity.

a. Facts

The Respondent, in its answer, admits that it issued written attendance and tardiness warnings to seventeen employees on or about the dates alleged in the complaint but denied that the warnings were in any way related to the employee's union activities.

The General Counsel offered limited evidence to link the warnings with the employee's union activities. Indeed, some of the employees that testified on behalf of the General Counsel including Peabody, Foerster, and James Lamb, all admitted that they were late or absent from work for which they received written warnings. For example, Lamb admitted that he was late ten times before receiving the July 24, 2004 written warning and was verbally warned about his tardiness on a number of occasions before he received the disciplinary warning. I also note that the General Counsel introduced an exhibit into evidence that showed the absenteeism and tardiness written warnings between November 2002 and September 2004 of those employees listed in paragraph 9 of the complaint (GC Exh. 16).

b. Analysis

Since the General Counsel did not establish its *Wright Line* burden or show any nexus between the employee's union activities and the written warnings, it has not proven the allegations in paragraph 9 of the complaint. Although, I previously found that respondent representatives interrogated three employees about there union sympathies who are listed in paragraph 9 of the complaint, the General Counsel did not conclusively establish that these employees received the written warnings because of their union activities. Indeed, the three employees admitted that they were late or absent and that is why they received the written warnings. In fact, of the remaining 14 employees listed in the complaint, the General Counsel did not submit any evidence that these individuals were involved in union activities other then the mere allegation that they received the written warnings because they selected the Union as their collective-bargaining representative.[4]

Under these circumstances, I recommend that this allegation be dismissed.

2. The termination of Glen Peabody

The General Counsel alleges in paragraph 10 of the complaint that on or about September 7, 2004, the Respondent discharged its employee Glen Peabody because he was active on behalf and supported the Union.

a. Facts

Peabody commenced employment with the Respondent's predecessor in March 2002, and remained employed when the Respondent took over in July 2003 until his termination on September 7, 2004.

Peabody performed maintenance and truck operator duties that included carrying rock and crushed stone in his assigned haul truck. Peabody primarily worked the evening shift with hours of work from 4:30 p.m. to 4 a.m. He was directly supervised by Chilson.

Peabody has been a union member since 1990 and participated in the two union organizing campaigns at the Respondent in July 2003 and July 2004. Peabody, during the July 2004 campaign, actively distributed and collected union authorization cards from fellow employees and passed out union pamphlets in the breakroom. During the same campaign, Peabody frequently wore shirts at work with the union logo and it was common knowledge throughout the quarry that Peabody was an ardent union supporter.

Peabody's work history and record while employed both with the Respondent and its predecessor was not without incident. For example, in his relatively short term of employment, Peabody has been issued both verbal and written warnings for excessive absenteeism and tardiness, careless disregard for equipment, leaving work without completing the job, and was

[4] I note that many of the written attendance and tardiness warnings predated the filing of the representation petition on July 21, 2004, and no evidence was introduced by the General Counsel that the Respondent was aware of the Union's organizing activity before that date.

involved in a truck accident that cost the Respondent in excess of $6000 to repair.

On September 3, 2004, Peabody was working in the quarry cleaning up waste materials. Earlier that morning, a female employee suffered an injury that required Chilson to leave the jobsite to accompany her to the hospital. During Chilson's absence from the quarry, one of the employees contacted him to state that the men were running out of work. Chilson told the employee to inform the men to hold tight until he returned to the quarry. Accordingly, the employees including Peabody filled there trucks with gasoline and waited for Chilson to return to the jobsite. Peabody, after filling his truck with gasoline and visiting the restroom, returned to his assigned haul truck. He took several aspirin due to experiencing a headache, turned on the truck engine, and put his head back while listening to the truck stereo. Employee Mathew Williams testified that Chilson returned to the quarry around 3:30 a.m.

Peabody next remembers a knock on his truck window by Chilson around 3:45 a.m. Chilson informed Peabody that he was going to be written up for sleeping on the job. Peabody responded that he was not sleeping but admitted that he had his eyes closed.

Chilson testified that when he returned to the quarry after taking the female employee home from the hospital he did not remember seeing Peabody near the lunchroom. He asked a number of employees if they knew where Peabody was and attempted to call him on the radio. None of the employees knew where Peabody was located. Chilson then walked towards the haul truck that Peabody normally drove and observed that the engine was running. Chilson climbed up the ladder to look in the cab window and observed Peabody leaning back in his seat. He knocked loudly on the window four or five times while calling Peabody's name in a loud voice. Finally, Peabody jumped out of his seat and Chilson instructed him to accompany him to the office. When they arrived at the office, Chilson testified that Peabody admitted to him that he was asleep in the truck. Peabody categorically denies that he was asleep in the truck. Because Chilson could not locate the corrective action forms in the office, he telephoned Spellman to inform him of the problem. Spellman instructed Chilson to write up the incident on a note pad. Chilson informed Peabody that they would handle the matter on September 7, 2004, when Gorg was expected to return form vacation, but gave Peabody a statement that he prepared summarizing what took place earlier that morning including the fact that he found Peabody asleep in his haul truck (GC Exh. 4). After Peabody and Chilson signed the statement, Chilson instructed Peabody to clock out and go home.

Chilson proceeded to the lunchroom and observed Peabody driving the haul truck towards the shop at an excessive rate of speed. Chilson got into his pickup truck and chased Peabody traveling around 30 miles per hour, while attempting to call Peabody on the radio to tell him to slow down. When Chilson finally caught up with Peabody at the shop, he informed him that he needed to slow down when driving on the quarry premises. According to Chilson, Peabody admitted to him that he was driving around 28 miles per hour, a speed in excess of the posted 15-mile-per-hour limit. Peabody denies that he informed Chilson that he was driving approximately 28 miles per hour. Both Chilson and Peabody engaged in a heated conversation regarding this incident and Chilson informed Peabody that it would be handled on September 7, 2004, when Gorg returned to work. Chilson memorialized the speeding incident on the bottom of the written statement that noted Peabody was asleep in his truck earlier that morning (GC Exh. 4).

Spellman telephoned Peabody at home on Friday afternoon, September 3, 2004, just before he was about to leave for work, and informed him that he was being placed on temporary suspension until Gorg returned to work. Spellman told Peabody that if he was cleared of these incidents, he would be paid for his lost time. Spellman testified that Peabody told him during the telephone conversation that he did fall asleep in his haul truck and that he was driving faster than he should have when he was bringing the truck back to the shop area. Peabody denies that he informed Spellman that he was asleep in the truck or was driving the haul truck at an excessive rate of speed.

On Tuesday morning, September 7, 2004, Spellman telephoned Peabody early in the morning and told him to report to work that day. Peabody, upon reporting to work, was told by Chilson to see Gorg. After Peabody arrived at the office, Gorg informed him that he was being terminated and read him the reasons for the termination (GC Exh. 5).

b. Analysis

I am not persuaded under *Wright Line,* that the General Counsel has made a strong showing that the Respondent was motivated by antiunion considerations when it terminated Peabody.

There is no disagreement that the Respondent knew that Peabody was an ardent union supporter and exhorted fellow employees to vote for the Union in the August 31, 2004 representation election. Likewise, I previously found that Chilson interrogated Peabody about his union activities and threatened him with unspecified reprisals if he continued to support the Union.

The Respondent asserts that the termination was for legitimate business reasons due to Peabody's past work record culminating with the two incidents that occurred on September 3, 2004.

In balancing the equities in this case, I am mindful of the fact that the Respondent has approximately 9000 employees throughout its worldwide operations and in many of its facilities the employees are represented by labor organizations including two in the immediate Philadelphia, Pennsylvania area. Thus, the Respondent is accustomed to dealing with a number of different labor organizations in its daily operations. Likewise, it is noted that the General Counsel has not alleged in the complaint that any other employee of Respondent was terminated because of their union activities despite the Union's victory in the representation election.

It strikes me that if the Respondent really wanted to terminate Peabody because of his union activities it stands to reason it would have done so prior to the representation election so as to prevent him from casting a vote and to show other union supporters that the same fate could happen to them. It was during this period that the Respondent became aware of his

vocal support for the Union based on a number of conversations that occurred between Peabody and Chilson. In these conversations, Chilson gleaned further evidence that Peabody was an ardent union supporter. Likewise, it does not withstand scrutiny that Peabody signed the statement on September 3, 2004, that specifically charged him with the dischargeable offense of sleeping on the job but testified that he informed Chilson on the same day that he was not asleep. If Peabody denied he was asleep, despite recognizing that he could be terminated, it seems logical to me that he would have noted this on the statement that he signed.[5]

The inescapable conclusion is that the termination on September 7, 2004, was solely based on the two incidents that occurred on September 3, 2004, in addition to Peabody's past work record rather then his earlier involvement and support of the Union. I also note that Peabody admitted in his testimony that he was going over the speed limit when he left the breakroom in his haul truck on his way to the shop. Significantly, the General Counsel dismissed another unfair labor practice charge filed by the Union in which the Respondent asserted that an employee was terminated for sleeping in her truck on worktime (R. Exhs. 30 and 31).[6] Thus, there is no question that sleeping on the job is a dischargeable offense for a first infraction (R. Exh. 29).

For all of the above reasons, I recommend that the allegations in paragraph 10 of the complaint be dismissed.[7]

D. The 8(a)(1) and (5) Allegations

1. Allegations concerning frequency of bargaining

The General Counsel alleges in paragraph 11 of the complaint that since on or about October 19, 2004, the Respondent and the Union have met at various times for the purposes of negotiating their initial collective-bargaining agreement. Since on or about November 11, 2004, the Union has requested that the Respondent meet with it more frequently, however, from December 9, 2004, until February 24, the Respondent failed and refused to meet at reasonable times to negotiate a collective-bargaining agreement.

a. Facts

By letter dated November 11, 2004, Bankard requested Carey to provide four dates for bargaining between December 9, 2004, and January 14, by November 15, 2004 (GC Exh. 13). By letter dated November 15, 2004, Carey responded and noted that the parties were presently scheduled to meet on December 7, 2004. By agreement of the parties, that meeting was canceled and rescheduled for December 14, 2004 (GC Exh. 14). Carey, in that letter, proposed the dates of January 12, 13, or 20 for negotiation sessions. Bankard testified that Carey informed him that he intended to negotiate once every 3 or 4 weeks because of his busy schedule and he could not meet back to back or more frequently. During the parties' negotiation session on December 14, 2004, the Union asked Carey for additional bargaining dates. Carey replied that because of scheduled vacations and the Christmas and New Year's holidays, the next possible available date was January 12 (GC Exh. 15).

b. Analysis

I note that the parties engaged in 26 bargaining sessions between October 19, 2004, and January 6, 2006 (GC Exh. 11). They met once in October, November, and December 2004, once in January and February 2005, twice in March 2005, four times in April 2005, twice in May 2005, three times in August 2005, once in September 2005, twice in November 2005, once in December 2005, and once in January 2006. It is also noted that the General Counsel has not alleged that the Respondent refused to meet with more reasonable frequency at any time after February 24. Indeed, I find that the degree of frequency in months after February 24 is not unlike the span of time between bargaining sessions held between December 9, 2004, and February 24.

During the critical period, the evidence discloses that Bankard went to the Respondent's facility on December 21, 2004, to review certain items of information. Likewise, the Respondent continued to respond to a number of the Union's information requests during that period (R. Exhs. 11 and 14).

Based on the forgoing, and particularly noting that the Respondent negotiated with the Union on four occasions during the critical period in addition to responding to requests for information, I am not convinced that the Act was violated. Moreover, the critical period fell during scheduled employer vacations and over the Christmas and New Year's holiday.

Accordingly, I recommend that the allegations in paragraph 11 of the complaint be dismissed.[8]

2. The July 1, 2005 information request

The Board explained in *Asarco, Inc.,* 316 NLRB 636, 643 (1995), enfd. in relevant part 86 F.3d 1401 (5th Cir. 1996), that:

[5] While there is a direct credibility conflict between the testimony of Spellman and Chilson when compared with Peabody concerning the issues of sleeping in the haul truck and driving at an excessive rate of speed when leaving the quarry premises, I need not resolve it due to my finding that the General Counsel did not conclusively establish that Peabody was terminated because of his activities on behalf of the Union.

[6] I note that the dismissal letter states that the Employer has discharged another employee for the same reason and its policy states that employees are subject to discharge for this behavior. The other employee referred to in the dismissal letter is Peabody.

[7] If others disagree with my finding that the General Counsel did not establish a prima facie case under *Wright Line,* I would still find that the Respondent would have terminated Peabody even in the absence of his protected activities. See, e.g., *Yuker Construction Co.,* 335 NLRB 1072 (2001) (discharge of employee based on mistaken belief does not constitute unfair labor practice, as employer may discharge an employee for any reason, whether or not it is just, so long as it is not for protected activity).

[8] I also note that the Regional Director in her July 29 dismissal letter in Case 4–CA–33886 involving the same parties rejected the Union's allegation that the Respondent failed to meet at reasonable times and stated that "since January 12, 2005, the parties have met on 14 occasions, exchanged proposals and counterproposals, reached agreements in some areas and narrowed their differences in others. Accordingly, I find that the Employer has not violated its obligation to bargain with the Union."

> In dealing with a certified or recognized collective-bargaining representative, one of the things which employers must do, on request, is to provide information that is needed by a bargaining representative for the proper performance of its duties. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal,* 224 NLRB 1506 (1976). In each case, the inquiry is whether or not both parties meet their duty to deal in good faith under the particular facts of the case. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149 (1973). The legal standard concerning just what information must be produced is whether or not there is "a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." *Bohemia, Inc.,* 272 NLRB 1128 (1984).

The General Counsel alleges in paragraph 12 of the complaint that the Union by letter dated July 1, sought information concerning employee claims for the incumbent health care plan and the medical exclusions under that plan.

a. Facts

By letter dated July 1, the Union requested 12 items of information to evaluate the Respondents bargaining proposal to continue its current health care plan in effect (GC Exh. 23). The complaint alleges that the Respondent refused to supply the information for items 7 and 12 in the July 1 letter. By letter dated July 12, the Respondent replied to the Union and stated that it previously gave them the summary plan description (SPD) and other requested information for the requests noted in items 7 and 12 (GC Exh. 24). Likewise, during the parties' July 12 negotiation session, the Respondent informed the Union that it believed it had given them the requested information in October 2004 (GC Exh. 25). By letter dated July 14, the Union further explained why it needed the 12 items of information and its relevancy (GC Exh. 26). By letter dated July 20, the Respondent replied to the Union's information requests (GC Exh. 27).

b. Analysis

The evidence discloses that the Respondent provided the Union a large packet of materials in October 2004 in response to a comprehensive request for information in anticipation of commencing initial contract negotiations (R. Exhs. 1(a)–(zz)). Contained in those materials was a copy of the current Blue Cross/Blue Shield medical plan for bargaining unit employees. My review of the medical plan shows that a list of exclusions is contained therein (R. Exh. 1(vv)).

With respect to the Union's request for claims information for the current health plan, I note that the Respondent replied to the Union's request on July 20 and provided the information to the Union.

Under these circumstances, and particularly noting that the Union received the information alleged in paragraph 12 of the complaint, I recommend that those allegations be dismissed.

3. The November 3, 2005 information request

The General Counsel alleges in paragraph 13 of the complaint that the Union orally on November 3, and by letter dated December 1, requested that the Respondent provide a list of medical providers which are currently in your plan and not in your new proposed plan. The complaint alleges that the Respondent refused to provide this information.

a. Facts

In August 2005, the Respondent distributed a bulletin to bargaining unit employees announcing that Aetna would become its health care provider effective in 2006 (GC Exh. 28). This bulletin was not provided to the Union at the time it was distributed to employees. By letter dated October 25, the Respondent officially notified the Union of the change from Blue Cross/Blue Shield to Aetna (GC Exh. 31). By letter dated October 26, the Union requested to negotiate over the Respondent's change of health care providers (GC Exh. 32).

The record discloses that during the November 3 bargaining session, the Union orally requested that the Respondent provide it with a list of medical providers for the new proposed plan and whether those providers have changed form the former health care plan (GC Exh. 33). Discussions of the need for the providers continued at the parties' November 9 bargaining session (GC Exh. 34). By letter dated December 1, the Union in item 7 renewed its request for a list of all medical providers which currently are in your old plan but not in your new proposed plan (GC Exh. 35). The Union sought the information to assist employees in the transition of care and to negotiate whether certain providers from the former medical plan could be included in the new health care plan.

b. Analysis

Carey testified that he informed the Union that the SPD was the same for the former health care plan and the new Aetna plan. Therefore, the Respondent argues that it provided the list of medical providers in response to the Union's request.

Carey admitted in his testimony, however, that some of the health care providers changed when the Respondent obtained a new health care plan.

The Respondent further argues that it provided an 800 telephone number to the Union in order to contact Aetna along with their computer website. Additionally, the Respondent provided the name and telephone number of the plans administrator that the Union could contact if it had questions about the plan and the medical providers that it included.

Both Giacin and Bankard credibly testified that they never received a list of medical providers from the Respondent in response to the information request. While both union representatives acknowledge that Carey provided them with alternative methods of contacting Aetna to obtain the information, they were unsuccessful in doing so. For example, Bankard attempted to access the website and was not able to pinpoint the information he was seeking. Likewise, calling the 800 telephone number did not achieve the desired results as the customer service representative refused to provide the information to the Union because they were not subscribers in the plan.

Lastly, Bankard left several telephone and fax messages for the plan administrator but none were returned.

Based on the forgoing, I conclude that an Employer owes a greater duty to give necessary and relevant information to an exclusive bargaining representative then providing a website or an 800 telephone number especially when it admits that some medical providers did change when the Respondent changed its health care plan. Indeed, I am of the opinion that Carey should have independently obtained the information from the website or the customer service 800 number and given it to the Union.[9] Likewise, I believe Carey should have personally contacted the plan administrator and either obtained the information for the Union or made arrangements for the Union to meet with the administrator.

Accordingly, I find that the General Counsel sustained the allegations in paragraph 13 of the complaint and therefore, the Respondent violated Section 8(a)(1) and (5) of the Act.

4. Premium holiday for dental coverage

The General Counsel alleges in paragraph 14 of the complaint that from October 24 to December 31, the Respondent implemented a premium holiday for dental coverage for bargaining unit employees without notice or affording the Union an opportunity to bargain absent an overall impasse in good-faith bargaining for a collective-bargaining agreement.

a. Facts

By letters dated October 12 and 25, the Respondent informed the Union and its employees that there will be a premium holiday beginning October 24 through December 31. This meant that the employees would not be required to make contributions to the plan for there dental coverage for the holiday period. The Respondent informed the Union that the insurance company was distributing moneys to their current and former policyholders and they had decided to return the money to the employees in the form of a premium holiday (GC Exhs. 31 and 37). By letter dated October 26, the Union requested to negotiate over the premium holiday for dental coverage (GC Exh. 32). By letter dated October 28, the Union renewed its request to negotiate and sought separate dates to address the premium holiday for dental coverage exclusive of their regular bargaining sessions (GC Exh. 38). The Union did not receive a reply to its October 28 request to negotiate. During the parties November 3 and 9 bargaining sessions, the Union asked questions about whether the money from the insurance company was in the form of an overpayment or a refund. Carey discussed the issue with the Union during the course of negotiations but interchanged the term overpayment and refund which prompted the Union to press for negotiations over this issue. The bargaining minutes confirm that the Respondent wanted to move onto other subjects such as management rights and was unwilling to set up separate bargaining sessions to address this matter (GC Exhs. 33 and 34).

b. Analysis

There is no dispute that the Respondent notified the Union in advance of the premium holiday for dental coverage and the Union immediately requested to negotiate. Bankard credibly testified that had the Union been able to negotiate they were interested in exploring a different method of how the overpayment of the dental premiums could be rebated to the bargaining unit employees. Likewise, the Union wanted to negotiate over whether the overpayment could be distributed to former employees who participated in the dental plan during the year but had since retired or left the Employer. Instead of entertaining negotiations, the Respondent unilaterally determined the manner in which the overpayment would be returned to bargaining unit employees without any input from the Union.

I conclude that the Union, as the exclusive bargaining representative of the unit employees, had the right to negotiate the method of how the overpayment would be distributed to Respondent's employees. Since the Respondent steadfastly refused to negotiate despite several attempts by the Union, I find that they violated Section 8(a)(1) and (5) of the Act.[10]

5. Information regarding the safety incentive program

The General Counsel alleges in paragraph 15 of the complaint that the Union requested information concerning the criteria the Respondent applied in administering its safety incentive program for 2004 and 2005. It further asserts that while the Respondent provided some information it was not accurate and it delayed in providing all of the information until on or about January 6, 2006.

a. Facts

During the parties' November 9 bargaining session, Bankard asked Carey what safety awards were given out in the past year. He also sought information on the dollar amount of the bonuses that employees received and whether it was distributed to one or more separate groups of employees. The Respondent submits that it provided the Union information on the safety incentive program when it gave them a voluminous amount of material in October 2004 prior to the commencement of collective bargaining for the parties' initial contract (R. Exh. 1(w)). By letter dated December 22, the Union requested additional information concerning "Safety Bonuses" as it recently learned that bonuses were just distributed to bargaining unit employees (GC Exh. 43). By letter dated January 6, 2006, Carey responded to the Union's December 22 request and included the same information that it had provided the Union in October 2004 in addition to the safety incentive reports for the period ending September 30 broken down into separate groups with the amount of the bonus awarded to each bargaining unit employee. The Respondent also provided the Union information regarding a safety meeting schedule and training documentation forms from its recent December 21 safety training meeting (GC Exh. 44).

[9] While I note that Carey did provide the website and directions to Bankard on how to obtain the information and testified that he was able to extract the names of pertinent medical providers, I find that Carey had a duty to print this information and provide it to the Union in response to there information request (R. Exh. 41; GC Exh. 57).

[10] Under these circumstances, I reject the Respondent's argument in its posthearing brief that the suspension of the dental insurance premiums was a gift that did not require negotiations with the Union.

b. Analysis

Based on the forgoing exchange of documents, I conclude that the Union received sufficient information responsive to its request to satisfy the requirements of the Act. On the other hand, I note that Carey informed the Union during the November 9 bargaining session that the facility's employees constituted a single group for safety incentive purposes. While this information was ultimately corrected, it was not done so until January 6, 2006. The Board has held that unreasonable delay in furnishing such information is as much a violation of the Act as a refusal to furnish any information at all. *Bundy Corp.,* 292 NLRB 671 (1989) (violation of Act to ignore or delay supplying the union with necessary information for 2/12 months).

Under these particular circumstances, while I conclude that the Respondent did respond and provide the Union with relevant and necessary information responsive to their request, it did not do so in a timely manner with respect to the composition of the safety groups. Indeed, the information that the Respondent originally provided to the Union was incorrect. Therefore, I find that the Respondent violated Section 8(a)(1) and (5) of the Act by not timely responding to the Union's request for information and providing incorrect information on the composition of the safety groups.

6. Information for premium holiday for dental coverage

The General Counsel alleges in paragraph 16 of the complaint that the Union by letter dated December 1, requested certain information related to the Respondent's premium holiday for dental coverage.

a. Facts

By letter dated December 1, the Union requested nine items of information regarding the Respondent's previously announced premium holiday for dental coverage (GC Exh. 39). The complaint alleges in paragraph 16 that the Respondent refused to provide necessary and relevant information as it concerned items 5–8 of the December 1 letter.

By letter dated December 5, the Respondent replied to the Union's December 1 letter (GC Exh. 40). The response answered the Union's question as it concerned item 5 but for items 6–8, the Respondent stated that "this question is irrelevant since only employees on the payroll at the time of the 'holiday' and contributing to dental insurance were affected." By letter dated December 7, the Union reiterated its need for the information and noted that the Respondent's December 5 response was incomplete in that it did not provide all of the requested information (GC Exh. 41).

b. Analysis

While the Respondent responded in a timely manner to the Union it did not specifically provide the information in items 6–8. As previously discussed above, the Union was interested in representing the interests of those employees who left the Employer prior to the announcement of the premium holiday regarding whether they were due refunds for premiums that they had previously paid. Thus, the request for information was necessary and relevant to formulate bargaining proposals for presentation to the Respondent. As noted above, the Respondent refused to negotiate over the premium holiday for dental coverage.

Under these circumstances, I conclude that the Respondent did not fully provide necessary and relevant information that the Union had requested on December 1.

Therefore, I find that the Respondent violated Section 8(a)(1) and (5) of the Act.

7. Request for administrative manuals

The General Counsel alleges in paragraph 17 of the complaint that by letter dated December 1, the Union requested copies of all administrative manuals, rules, or regulations with respect to the Respondent's new proposed health care plan.

a. Facts

As discussed above, the Respondent officially notified the Union on October 25, that effective January 1, 2006, Aetna will replace Blue Cross/Blue Shield as the Employer's medical insurance carrier (GC Exh. 31). By letter dated October 26, the Union requested to negotiate over the change in medical insurance carriers (GC Exh. 32). The parties discussed the issue of the new proposed health care plan at their bargaining sessions of November 3 and 9 (GC Exhs. 33 and 34). By letter dated December 1, the Union requested information with respect to nine items relating to the new health care provider (GC Exh. 35). The allegation in paragraph 17 of the complaint only concerns item 5 in the December 1 letter. By letter dated December 5, the Respondent replied to the Union and informed them that the only change to the existing plan is that of the administrator and the providers and that the documents previously given to them are applicable.

b. Analysis

The Respondent repeatedly informed the Union that unlike Blue Cross/Blue Shield, Aetna did not publish a separate administrative manual, rules or regulations and therefore, it could not supply the Union with such information. This was specifically discussed at the parties' December 1 negotiation session which is confirmed in the Union's notes of that meeting (GC Exh. 36). Those notes specifically reflect Carey referencing item 5 of the Union's December 1 request for information.

Under these circumstances, and particularly noting that the Respondent responded to the Union's request for information that is alleged in paragraph 17 of the complaint, I find that the Act has not been violated. Therefore, I recommend that paragraph 17 of the complaint be dismissed.

8. Information for a dual health care plan

The General Counsel alleges in paragraph 18 of the complaint that by letter dated December 1, the Union requested information concerning the number of unit employees who would qualify for a dual health care plan.

a. Facts

By letter dated July 1, the Union confirmed that the Respondent proposed to continue its current Blue Cross/Blue Shield health care plan for bargaining unit employees and sought twelve items of information (GC Exh. 23). At the parties July 13 bargaining session, the Union made a proposal that the Em-

ployer provide health, dental, and vision insurance coverage to all bargaining unit employees. It further proposed that the Employer shall have the right to change insurance plans during the life of the agreement, provided that the replacement insurance is substantially equal or greater to the present coverage (R. Exh. 2).[11] As discussed above, the Respondent distributed a bulletin to employees in August 2005 announcing that it intended to change health care plans from Blue Cross/Blue Shield to Aetna (GC Exh. 28). While the Union was not provided this bulletin by the Respondent, Bankard received a copy from one of the employees. It was not until October 25 that the Respondent officially notified the Union that it intended to change health care plans effective in January 2006.

The next negotiation session after the Union became aware of the intended change in health care plans occurred on August 11. The Union proposed that the Employer maintain its current health care plan with Blue Cross/Blue Shield. During the parties August 30 bargaining session the Respondent rejected the Union's proposal.

On November 3, during their bargaining session, the Union proposed a 542 Health and Welfare plan to substitute for the Employer's newly proposed Aetna health care plan. This plan was sponsored by the Union and was presently in effect at another of Respondent's facilities whose employees were represented by a sister local of the Union. The Respondent considered the Union's proposal during a caucus but determined that the 542 Health and Welfare plan was more costly per employee then the newly proposed Aetna health care plan and so informed the Union.

At the next bargaining session held on November 9, the Union suggested that costs could be decreased if the Respondent would consider adopting a health care plan that provided for single coverage, dual coverage, and family coverage. The Union pointed out that the current and newly proposed health care plan at the Respondent only provided for single and family coverage. The Union opined that a number of the families presently in the Respondent's health care plan were required to select family coverage even if only two family members comprised the family. The Union suggested that if a number of the families were able to switch to dual coverage, a plan only covering two people, the health care costs for both the Respondent and the employees could be substantially reduced. Accordingly, the Union orally and subsequently by letter dated December 1, requested that the Respondent either poll there employees or check their health care records to provide them this information (GC Exh. 39). The Union informed Carey that upon information and belief only thirteen employees were presently enrolled in their family plan. Bankard volunteered to poll the employees at the facility but this was rejected by Carey. During the bargaining session Carey promised to look into the Union's request (GC Exh. 34). By letter dated December 5, the Respondent replied to the Union's request for information relating to dual coverage by stating in pertinent part: "As we have answered you on several occasions, you are aware that the Company offers only single or family coverage and the Company does not have information on who would, if available, choose two person coverage; We have suggested that you canvas the employees" (GC Exh. 40).

b. Analysis

There is no dispute that health care coverage was a significant component in the parties discussions for an initial collective-bargaining agreement. Both the Union and the Respondent made a number of proposals involving different types of health care plans during the course of there protracted negotiations. In seeking information for a dual health care plan, the Union was attempting to convince the Respondent that such changes could potentially save both the Respondent and the employees money on there health care costs. In my opinion, such a request for information was necessary and relevant for the Union to formulate concrete bargaining proposals with specific cost savings. The Union's request to Carey for permission to poll the employees at the facility was not unreasonable. Nor was it unreasonable for the Union to request the Employer to speak to the thirteen employees and inquire how many family members were enrolled under the family plan or for the Employer to review the 13 employees' personnel files for the specific information. Rather, the Respondent rejected each of these eminently reasonably suggestions and never provided the requested information to the Union.

Under these circumstances, I find that the Respondent refused to provide the Union with necessary and relevant information and therefore, violated Section 8(a)(1) and (5) of the Act.

9. Bargaining over the safety incentive program

The General Counsel alleges in paragraph 19 of the complaint that the Union orally requested on November 9 to negotiate over the Respondent's safety incentive program and since that date the Respondent has refused to do so.

a. Facts

The parties met to negotiate on November 9. I have reviewed the Union's bargaining notes for that date and while Bankard sought information concerning the safety bonuses that were given to bargaining unit employees, no request to negotiate over the safety incentive program is found therein (GC Exh. 34). The Respondent argues that since there were no changes made to the safety incentive program since 1999, there was no obligation to negotiate even if a request to bargain had been made (GC Exh. 44, item c). I note that the Union's notes for January 6, 2006 (GC Exh. 45), reflect that Bankard requested to negotiate over safety awards but no mention of the safety incentive program is found therein.

b. Analysis

Based on the forgoing, and particularly noting that the Union's notes do not confirm that an independent request was made by the Union to negotiate on November 9 over the safety incentive program, I find that the General Counsel has not sustained the allegations alleged in paragraph 19 of the complaint. Under those circumstances, I recommend that the allegations be dismissed.

[11] The July 1 correspondence and the union proposal were made prior to the Respondent's notice to the Union and its employees that it intended to change its health insurance provider to Aetna.

10. The January 1, 2006 implementation of conditions of employment

The General Counsel alleges in paragraph 20 of the complaint that the Respondent unilaterally implemented seven conditions of employment listed therein without prior notice or affording the Union an opportunity to bargain concerning this conduct and absent an overall impasse in good-faith bargaining for a collective-bargaining agreement as a whole.

a. Facts

At the parties December 1, 2005 negotiation session, Carey informed the Union that the parties were at impasse. Giacin asked Carey if there were no open issues. Carey replied that there were a lot of open issues. Bankard asked Carey whether he was going to implement the terms of the contract, Carey replied no. Bankard asked Carey whether the Respondent would continue to negotiate and Carey said no, we are at impasse (GC Exh. 36).

By letter dated December 7, the Union confirmed that there were still numerous open issues that needed to be negotiated and many outstanding requests for information that had not been provided or responded to. The Union also vigorously contested the Respondent's statement that the parties were at impasse. In fact, Bankard asserts in the letter that there were approximately 37 outstanding issues that needed resolution (GC Exh. 41).

By letter dated December 9, the Respondent updated all bargaining unit employees on the status of collective-bargaining negotiations (GC Exh. 46). It apprised the employees that on September 2, it presented its final offer to the Union. On or about September 28, however, the union membership rejected the final offer. Thereafter, the parties resumed collective-bargaining negotiations and met four additional times in an effort to achieve an agreement. The letter further apprised the employees that the Respondent was of the opinion that it had reached a bargaining impasse and it intends to implement many of the provisions contained in its final offer. The seven provisions that it specifically intended to implement are set forth in paragraph 20 of the complaint and include lump-sum wage increases, the elimination of skill points and wage level systems, the continuation of the Employer's health care and retirement plans, and an attendance policy.

b. Analysis

In *Bottom Line Enterprises,* 302 NLRB 373 (1991), the Board held that during negotiations, "an employer's obligation to refrain from unilateral changes extends beyond the mere duty to give notice and an opportunity to bargain, it encompasses a duty to refrain from implementation at all, unless and until an overall impasse had been reached in bargaining as a whole."

In *Taft Broadcasting Co.,* 163 NLRB 475, 478 (1967), enfd. sub. nom. *Television Artists AFTRA v. NLRB,* 395 F.2d 622 (D.C. Cir. 1968), the Board defined an impasse as a situation where "good-faith negotiations have exhausted the prospects of concluding an agreement." See also *Newcor Bay City Division,* 345 NLRB 1229, 1238 (2005). This principle was restated by the Board in *Hi-Way Billboards, Inc.,* 206 NLRB 22, 23 (1973), enf. denied on other grounds 500 F.2d 181 (5th Cir. 1974), as follows:

> A genuine impasse in negotiations is synonymous with a deadlock; the parties have discussed a subject or subjects in good faith, and, despite their best efforts to achieve agreement with respect to such, neither party is willing to move from its respective position.

The burden of demonstrating the existence of impasse rests on the party claiming impasse. The question of whether a valid impasse exists is a "matter of Judgment" and among the relevant factors are "[t]he bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, [and] the contemporaneous understanding of the parties as to the state of negotiations." *Taft Broadcasting Co.,* supra at 478.

I find that the Respondent has not met its burden to establish a valid impasse. The Respondent did not inform the Union that impasse was reached over any specific issue. Rather, it appears that the Respondent determined that the parties were at impasse based on the totality of its final proposal.

As discussed above, there were numerous bargaining issues and information requests outstanding when the Respondent prematurely declared impasse. Indeed, a number of those information requests were directly related to the health care plan. The Union, once being officially informed on October 25 that the Respondent intended to change health care plans, made it very clear that it wanted to negotiate over the newly proposed plan and even proposed its own plan for consideration by the Employer. Further, I note that after the Respondent declared impasse, the parties participated in another negotiation session on January 6, 2006, and Carey responded on that date to outstanding information requests previously submitted by the Union on November 11, December 22 and 24, and January 3, 2006 (GC Exh. 44). Such actions by the Respondent belie its declaration of impasse.[12]

Likewise, I am in agreement with the General Counsel's argument that under the Board's holding in *Decker Coal,* 301 NLRB 729 (1991), the Respondent's failure to provide necessary and relevant information precluded impasse, and therefore, prevented lawful implementation of a final contract offer. Indeed, the refusal of the respondent to specifically provide health care information to the Union directly impacts on the core issues separating the parties in this case. See *Caldwell Mfg. Co.,* 346 NLRB 1159 (2006). Accordingly, I reject the Respondent's arguments to the contrary in its post hearing brief including its position that the information requests were made solely for tactical reasons of avoiding impasse and delay.

Based on the forgoing, I find that the Respondent has failed to meet its burden of establishing the existence of a valid im-

[12] In contrast to the Board's holding in *Sierra Bullets, LLC,* 340 NLRB 242 (2003), the record in the subject case contains all of the parties bargaining notes during their 26 bargaining sessions which spanned approximately 16 months and there was extensive testimony by representatives of the union and the respondent on the course of bargaining throughout the negotiation period.

passe. Accordingly, the Respondent violated Section 8(a)(1) and (5) of the Act when it unilaterally implemented new terms and conditions of employment on January 1, 2006.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by interrogating employees concerning their union sympathies, soliciting employee's complaints and grievances and promising employees improved terms and conditions of employment, threatening employees with unspecified reprisals, and telling employees it would be futile to select the Union.

4. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by refusing to furnish the Union with necessary and relevant information regarding a current list of medical providers that is not in the new proposed health plan, information concerning the premium holiday for dental coverage, information concerning a dual health care plan, not providing the Union with information in a timely manner, by unilaterally implementing and refusing to negotiate in good faith with the Union concerning the premium holiday for dental coverage, and unilaterally implementing on January 1, 2006, without notice or bargaining and absent an overall impasse in good-faith bargaining, wage increases and lump-sum payments to employees, the elimination of skill point and wage level systems, the continuation of the Employer's health care and retirement plans and the implementation of an attendance policy.

5. Respondent did not violate Section 8(a)(1) of the Act when Shawn Gorg interrogated an employee concerning the employee's union sympathies.

6. Respondent did not violate Section 8(a)(1) and (3) of the he Act by issuing written attendance and tardiness warnings to seventeen employees and when it terminated its employee Glen Peabody.

7. Respondent did not violate Section 8(a)(1) and (5) of the Act by refusing to negotiate over the safety incentive program, by refusing to meet at reasonable times with the Union to negotiate a collective-bargaining agreement, by refusing to provide necessary and relevant information regarding all claims and exclusions of the Respondent's 2005 health care plan, by refusing to provide copies of all administrative manuals, rules and regulations for the new proposed health care plan, and by refusing to provide information concerning the criteria applied in administering its safety incentive program for 2004 and 2005.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Since the Respondent refused to bargain with the Union about the premium holiday for dental coverage and the implementation of wage increases and lump-sum payments to employees, the elimination of the skill point and wage level systems, the continuation of the Employer's health care and retirement plans and the implementation of an attendance policy, I shall order it to cease and desist from engaging in such conduct and to bargain on request with the Union about these matters. In regard to the wage increases and lump-sum payments in addition to the other unilateral changes, the Union may use its discretion as to whether the changes should be rescinded. The Respondent shall also make whole any employee for any loss of earnings and other benefits suffered as a result of its unlawful action. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest to be computed in the manner set forth in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). The Respondent shall rescind and remove from employees' files all discipline issued to them as a result of Respondent's unilateral implementation of the attendance policy and make employees whole for any loss they may have suffered as a result of such discipline in the manner set forth in the above cases.

[Recommended Order omitted from publication.]